

## Office of the Secretary of Defense

## § 37.840

(b) If the payments are based on payable milestones, the recipient will submit a report or other evidence of accomplishment to the program official at the completion of each predetermined activity. The agreement administrator may approve payment to the recipient after receiving validation from the program manager that the milestone was successfully reached.

### **§ 37.815 May the Government withhold payments?**

Your TIA must provide that the administrative agreements officer may withhold payments in the circumstances described in 32 CFR 34.12(g), but not otherwise.

### **§ 37.820 Must I require a recipient to return interest on advance payments?**

If your expenditure-based TIA provides for either advance payments or payable milestones, the agreement must require the recipient to:

(a) Maintain in an interest-bearing account any advance payments or milestone payment amounts received in advance of needs to disburse the funds for program purposes unless:

(1) The recipient receives less than \$120,000 in Federal grants, cooperative agreements, and TIAs per year;

(2) The best reasonably available interest-bearing account would not be expected to earn interest in excess of \$1,000 per year on the advance or milestone payments; or

(3) The depository would require an average or minimum balance so high that it would not be feasible within the expected Federal and non-Federal cash resources for the project.

(b) Remit annually the interest earned to the administrative agreements officer.

## REVISION OF BUDGET AND PROGRAM PLANS

### **§ 37.825 Must I require the recipient to obtain prior approval from the Government for changes in plans?**

If it is an expenditure-based award, your agreement must require the recipient to obtain the agreement administrator's prior approval if there is to be a change in plans that results in a need for additional Federal funding

(this is unnecessary for a fixed-support TIA because the recipient is responsible for additional costs of achieving the outcomes). Other than that, the program official's substantial involvement in the project should ensure that the Government has advance notice of changes in plans.

### **§ 37.830 May I let a recipient charge pre-award costs to the agreement?**

Pre-award costs, as long as they are otherwise allowable costs of the project, may be charged to an expenditure-based TIA only with the specific approval of the agreements officer. All pre-award costs are incurred at the recipient's risk (*i.e.*, no DoD Component is obligated to reimburse the costs if for any reason the recipient does not receive an award or if the award is less than anticipated and inadequate to cover the costs).

## PROGRAM INCOME

### **§ 37.835 What requirements do I include for program income?**

Your TIA should apply the standards of 32 CFR 34.14 for program income that may be generated. Note the need to specify whether the recipient is to have any obligation to the Federal Government with respect to program income generated after the end of the project period (the period, as established in the award document, during which Federal support is provided). Doing so is especially important if the TIA includes a provision for the recipient to return any amounts to the Federal Government (see § 37.580).

## INTELLECTUAL PROPERTY

### **§ 37.840 What general approach should I take in negotiating data and patent rights?**

(a) You should confer with program officials and legal counsel to develop an overall strategy for intellectual property that takes into account inventions and data that may result from the project and future needs the Government may have for rights in them. The strategy should take into account any intellectual property the Government is furnishing and any pre-existing proprietary information that the recipient is furnishing, as well as data